

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 129

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 2a of chapter XI (MCL 771.2a), as amended by
1998 PA 520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XI

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Sec. 2a. (1) The court may place an individual convicted of
violating section 411h of the Michigan penal code, 1931 PA 328, MCL
750.411h, on probation for not more than 5 years. The sentence is
subject to the conditions of probation set forth in section 411h(3)
of the Michigan penal code, 1931 PA 328, MCL 750.400h, and section
3 of this chapter. The probation is subject to revocation for any
violation of a condition of that probation.

1 (2) The court may place an individual convicted of violating
2 section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i,
3 on probation for any term of years, but not less than 5 years. The
4 sentence is subject to the conditions of probation set forth in
5 section 411i(4) of the Michigan penal code, 1931 PA 328, MCL
6 750.411i, and section 3 of this chapter. The probation is subject
7 to revocation for any violation of a condition of that probation.

8 (3) The court shall by order, to be filed or entered in the
9 cause as the court directs by general rule or in each case, fix and
10 determine the period and conditions of probation. The order is part
11 of the record in the cause. The court may amend the order in form
12 or substance at any time.

13 (4) ~~This section does~~ **SUBSECTIONS (1), (2), AND (3) DO** not
14 apply to a juvenile placed on probation and committed under section
15 1(3) or (4) of chapter IX to an institution or agency described in
16 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
17 803.309.

18 **(5) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE COURT MAY PLACE**
19 **AN INDIVIDUAL CONVICTED OF A LISTED OFFENSE ON PROBATION SUBJECT TO**
20 **THE REQUIREMENTS OF THIS SUBSECTION AND SUBSECTIONS (6) THROUGH**
21 **(11) FOR ANY TERM OF YEARS BUT NOT LESS THAN 5 YEARS.**

22 **(6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (7) TO (11),**
23 **IF AN INDIVIDUAL IS PLACED ON PROBATION UNDER SUBSECTION (5), THE**
24 **COURT SHALL ORDER THE INDIVIDUAL NOT TO DO ANY OF THE FOLLOWING:**

25 **(A) RESIDE WITHIN A STUDENT SAFETY ZONE.**

26 **(B) WORK WITHIN A STUDENT SAFETY ZONE.**

27 **(C) LOITER WITHIN A STUDENT SAFETY ZONE.**

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(7) THE COURT SHALL NOT IMPOSE A CONDITION OF PROBATION DESCRIBED IN SUBSECTION (6)(A) IF ANY OF THE FOLLOWING APPLY:

(A) THE INDIVIDUAL IS NOT MORE THAN 19 YEARS OF AGE AND ATTENDS SECONDARY SCHOOL OR POSTSECONDARY SCHOOL, AND RESIDES WITH HIS OR HER PARENT OR GUARDIAN. HOWEVER, AN INDIVIDUAL DESCRIBED IN THIS SUBDIVISION SHALL BE ORDERED NOT TO INITIATE OR MAINTAIN CONTACT WITH A MINOR WITHIN THAT STUDENT SAFETY ZONE. THE INDIVIDUAL SHALL BE PERMITTED TO INITIATE OR MAINTAIN CONTACT WITH A MINOR WITH WHOM HE OR SHE ATTENDS SECONDARY SCHOOL OR POSTSECONDARY SCHOOL IN CONJUNCTION WITH THAT SCHOOL ATTENDANCE.

[(B) THE INDIVIDUAL IS NOT MORE THAN 26 YEARS OF AGE, ATTENDS A SPECIAL EDUCATION PROGRAM, AND RESIDES WITH HIS OR HER PARENT OR GUARDIAN OR IN A GROUP HOME OR ASSISTED LIVING FACILITY. HOWEVER, AN INDIVIDUAL DESCRIBED IN THIS SUBDIVISION SHALL BE ORDERED NOT TO INITIATE OR MAINTAIN CONTACT WITH A MINOR WITHIN THAT STUDENT SAFETY ZONE. THE INDIVIDUAL SHALL BE PERMITTED TO INITIATE OR MAINTAIN CONTACT WITH A MINOR WITH WHOM HE OR SHE ATTENDS A SPECIAL EDUCATION PROGRAM IN CONJUNCTION WITH THAT ATTENDANCE.]

(C) THE INDIVIDUAL WAS RESIDING WITHIN THAT STUDENT SAFETY ZONE AT THE TIME THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION WAS ENACTED INTO LAW. HOWEVER, IF THE INDIVIDUAL WAS RESIDING WITHIN THE STUDENT SAFETY ZONE AT THE TIME THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION WAS ENACTED INTO LAW, THE COURT SHALL ORDER THE INDIVIDUAL NOT TO INITIATE OR MAINTAIN CONTACT WITH ANY MINORS WITHIN THAT STUDENT SAFETY ZONE. THIS SUBDIVISION DOES NOT PROHIBIT THE COURT FROM ALLOWING CONTACT WITH ANY MINORS NAMED IN THE PROBATION ORDER FOR GOOD CAUSE SHOWN AND AS SPECIFIED IN THE PROBATION ORDER.

(8) AN ORDER ISSUED UNDER SUBSECTION (6)(A) SHALL NOT PROHIBIT AN INDIVIDUAL FROM BEING A PATIENT IN A HOSPITAL OR HOSPICE THAT IS LOCATED WITHIN A STUDENT SAFETY ZONE. HOWEVER, THIS EXCEPTION DOES NOT APPLY TO AN INDIVIDUAL WHO INITIATES OR MAINTAINS CONTACT WITH A MINOR WITHIN THAT STUDENT SAFETY ZONE.

(9) THE COURT SHALL NOT IMPOSE A CONDITION OF PROBATION DESCRIBED IN SUBSECTION (6)(B) IF THE INDIVIDUAL WAS WORKING WITHIN

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1 THE STUDENT SAFETY ZONE AT THE TIME THE AMENDATORY ACT THAT ADDED
2 THIS SUBSECTION WAS ENACTED INTO LAW. HOWEVER, IF THE INDIVIDUAL
3 WAS WORKING WITHIN THE STUDENT SAFETY ZONE AT THE TIME THE
4 AMENDATORY ACT THAT ADDED THIS SUBSECTION WAS ENACTED INTO LAW, THE
5 COURT SHALL ORDER THE INDIVIDUAL NOT TO INITIATE OR MAINTAIN
6 CONTACT WITH ANY MINORS IN THE COURSE OF HIS OR HER EMPLOYMENT
7 WITHIN THAT STUDENT SAFETY ZONE. THIS SUBSECTION DOES NOT PROHIBIT
8 THE COURT FROM ALLOWING CONTACT WITH ANY MINORS NAMED IN THE
9 PROBATION ORDER FOR GOOD CAUSE SHOWN AND AS SPECIFIED IN THE
10 PROBATION ORDER.

11 (10) THE COURT SHALL NOT IMPOSE A CONDITION OF PROBATION
12 DESCRIBED IN SUBSECTION (6)(B) IF THE INDIVIDUAL ONLY
13 INTERMITTENTLY OR SPORADICALLY ENTERS A STUDENT SAFETY ZONE FOR
14 PURPOSES OF WORK. IF THE INDIVIDUAL INTERMITTENTLY OR SPORADICALLY
15 WORKS WITHIN A STUDENT SAFETY ZONE, THE COURT SHALL ORDER THE
16 INDIVIDUAL NOT TO INITIATE OR MAINTAIN CONTACT WITH ANY MINORS IN
17 THE COURSE OF HIS OR HER EMPLOYMENT WITHIN THAT SAFETY ZONE. THIS
18 SUBSECTION DOES NOT PROHIBIT THE COURT FROM ALLOWING CONTACT WITH
19 ANY MINORS NAMED IN THE PROBATION ORDER FOR GOOD CAUSE SHOWN AND AS
20 SPECIFIED IN THE PROBATION ORDER.

21 (11) THE COURT MAY EXEMPT AN INDIVIDUAL FROM PROBATION UNDER
22 SUBSECTION (5) IF ANY OF THE FOLLOWING APPLY:

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24 **(A)]** THE INDIVIDUAL HAS SUCCESSFULLY COMPLETED HIS OR HER

25 PROBATIONARY PERIOD UNDER SECTIONS 11 TO 15 OF CHAPTER II FOR

26 COMMITTING A LISTED OFFENSE AND HAS BEEN DISCHARGED FROM YOUTHFUL

27 TRAINEE STATUS.

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1 [(B)] THE INDIVIDUAL WAS CONVICTED OF COMMITTING OR ATTEMPTING
2 TO COMMIT A VIOLATION SOLELY DESCRIBED IN SECTION 520E(1)(A) OF THE
3 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520E, AND AT THE TIME OF
4 THE VIOLATION WAS 17 YEARS OF AGE OR OLDER BUT LESS THAN 21 YEARS
5 OF AGE AND IS NOT MORE THAN 5 YEARS OLDER THAN THE VICTIM.

6 (12) AS USED IN THIS SECTION:

7 (A) "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN SECTION 2
8 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

9 (B) "LOITER" MEANS TO REMAIN FOR A PERIOD OF TIME AND UNDER
10 CIRCUMSTANCES THAT A REASONABLE PERSON WOULD DETERMINE IS FOR THE
11 PRIMARY PURPOSE OF OBSERVING OR CONTACTING MINORS.

12 (C) "MINOR" MEANS AN INDIVIDUAL LESS THAN 18 YEARS OF AGE.

13 (D) "SCHOOL" MEANS A PUBLIC, PRIVATE, DENOMINATIONAL, OR
14 PAROCHIAL SCHOOL OFFERING DEVELOPMENTAL KINDERGARTEN, KINDERGARTEN,
15 OR ANY GRADE FROM 1 THROUGH 12. SCHOOL DOES NOT INCLUDE A HOME
16 SCHOOL.

17 (E) "SCHOOL PROPERTY" MEANS A BUILDING, FACILITY, STRUCTURE,
18 OR REAL PROPERTY OWNED, LEASED, OR OTHERWISE CONTROLLED BY A
19 SCHOOL, OTHER THAN A BUILDING, FACILITY, STRUCTURE, OR REAL
20 PROPERTY THAT IS NO LONGER IN USE ON A PERMANENT OR CONTINUOUS
21 BASIS, TO WHICH EITHER OF THE FOLLOWING APPLIES:

22 (i) IT IS USED TO IMPART EDUCATIONAL INSTRUCTION.

23 (ii) IT IS FOR USE BY STUDENTS NOT MORE THAN 19 YEARS OF AGE
24 FOR SPORTS OR OTHER RECREATIONAL ACTIVITIES.

25 (F) "STUDENT SAFETY ZONE" MEANS THE AREA THAT LIES 1,000 FEET
26 OR LESS FROM SCHOOL PROPERTY.

27 Enacting section 1. This amendatory act takes effect January

1 1, 2006.